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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

PERICLES TERRANCE STATIRAS,

Defendant and Appellant.

D073891

(Super. Ct. No. SCD275960)

APPEAL from a judgment of the Superior Court of San Diego County, Polly H. Shamoon, Judge. Affirmed.

Eric E. Reynolds, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Robin Urbanski and Donald W. Ostertag, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Pericles Terrance Statiras pleaded guilty to one count of burglary (Pen. Code, § 459). The court placed him on five years formal probation with the condition that he serve 365 days in custody, with treatment in a residential treatment facility after serving 160 actual days. It imposed as conditions of probation (1) an electronic search requirement that Statiras "[s]ubmit [his] person, vehicle, residence, property, personal effects, computers, and recordable media including electronic devices to search at any time with or without a warrant, and with or without reasonable cause, when required by [a probation officer] or law enforcement officer" and (2) a requirement that Statiras obtain his probation officer's approval as to his residence and employment. On appeal, Statiras contends the electronic search condition is unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) and unconstitutionally overbroad. He further contends the residence and employment approval condition is likewise unconstitutionally overbroad. We reject these contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND¹

In March 2018, Statiras pleaded guilty to burglary, admitting as the factual basis for the plea that he "entered a non-commercial building with the intent to commit a theft—(a law office not during business hours[.])" He poured liquid on an alarm keypad; ransacked offices, the kitchen and bathrooms; and pried open an alarm box and tried to disable it by tearing out wires and components. He then locked himself in a rear office

¹ Some of the background facts are taken from Statiras's probation report.

and either fell asleep or passed out from using narcotics. After his arrest, Statiras began screaming at the officers, complaining it was too hot in the police vehicle and removing his clothing. When officers told him to calm down because it was 63 degrees and the windows of the car were down as much as possible, Statiras replied, "You do two bindles of meth and then get grabbed by the cops and try to be calm!"

Statiras was 46 years old and a transient at the time of the offense. He has a history of committing crimes in Georgia, Montana and Florida beginning in 1990. Specifically, he has on his record two 1990 felony burglary convictions, 1991 misdemeanor driving while intoxicated and felony terrorist threat convictions, a 1992 misdemeanor theft conviction, a 1992 plea of nolo contendere to misdemeanor contempt, a 1994 plea of nolo contendere for misdemeanor possession of a barbiturate, 2001 misdemeanor convictions for possession of drugs and drug paraphernalia and obstructing a peace officer; 2012 convictions for felony willful obstruction of a law enforcement officer and possession/use of a drug-related object, a 2013 plea of nolo contendere for fleeing officers, and a 2014 conviction for felony possession of a schedule 1 controlled substance. In 2013 and 2015 he violated his probation and a warrant was issued for his arrest. In San Diego, Statiras pleaded guilty in 2018 to two misdemeanor offenses of possessing controlled substances after failing to appear in December 2017, but warrants were later issued for his arrest. In January 2018 he was convicted of misdemeanor vandalism in Los Angeles. He was active on probation in two Georgia cases at the time of the current offense, and the probation officer considered his adjustment to probation unsatisfactory.

Statiras also has a history of daily marijuana use since age 16. He smoked cocaine three to four times a week for ten years ending in 1997, used LSD 25 to 50 times since age 16, had been using methamphetamine since November 2017, and used methamphetamine on the day of his arrest.

At Statiras's sentencing hearing, the court stated it would impose the above-referenced electronic search condition (condition 6n) and a condition requiring Statiras to obtain his probation officer's approval as to his residence and employment (condition g). It ordered Statiras to, among other things, "obey all laws," and imposed a condition that Statiras submit his residence, personal effects, and vehicle to search at any time with or without a warrant, and with or without reasonable cause, when required by his probation officer. Statiras's counsel objected to imposition of condition 6n, stating: "This is a case in which my client while high on drugs entered a building and ransacked it. I don't even think he had any electronic devices on him. His pockets were filled with things like throat lozenges and hair ties. There is no nexus to the conduct in this case nor anything in his prior history." The probation officer responded by asserting that Statiras "gathered items to sell" and it was "likely he would have used an electronic device to attempt to do that." The probation also pointed out Statiras was "in possession of controlled substances and has prior controlled substance offenses It's also likely he can try and obtain drugs through electronic devices."

The court imposed the conditions, stating: "This gentleman has had a drug problem for the last two decades that has apparently spurred other violations in the law. We're going back to a conviction date of 1989 and included in the several pages of his rap

sheet—that included within the probation report—is a history of drug use and abuse, violations of probation for getting more drugs, fleeing and theft as a result of drug issues along with the fact that he continues to show violence when he is under the influence of drugs. Based on all of those, the Court will find probation will be helped with the opportunity and ability to get into electronic devices to see if he is trying to obtain more drugs or using that to sell drugs. Also based on his presentation that he has started using drugs at age 13 and has used a variety of them, it's unlikely that without further supervision from probation he will stop. Given all those reasons, [probation condition] 6n is being ordered in this case to extend to electronic devices."

DISCUSSION

I. Legal Principles and Standard of Review

"When an offender chooses probation, thereby avoiding incarceration, state law authorizes the sentencing court to impose conditions on such release that are 'fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and . . . for the reformation and rehabilitation of the probationer.' ([Pen. Code,] § 1203.1, subd. (j).) Accordingly, . . . a sentencing court has 'broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to . . . [Penal Code] section 1203.1.' [Citation.] But such discretion is not unlimited: '[A] condition of probation must serve a purpose specified in the statute,' and conditions regulating noncriminal conduct must be '"reasonably related to the crime of which the defendant was convicted or to future criminality.'" ' " (*People v. Moran* (2016) 1 Cal.5th 398, 402-403.)

"[T]he types of conditions a court may impose on a probationer are not unlimited. We first recognized the limits on probation conditions in the seminal case of [*Lent*, *supra*,] 15 Cal.3d 481 'Generally, "[a] condition of probation will not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality' [Citation.]" [Citation.] This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.' " (*People v. Moran*, *supra*, 1 Cal.5th at p. 405.)

Appellate courts generally review probation conditions for abuse of discretion. (*People v. Moran*, *supra*, 1 Cal.5th at p. 403; *People v. Acosta* (2018) 20 Cal.App.5th 225, 229.) Thus, "a reviewing court will disturb the trial court's decision to impose a particular condition of probation only if, under all the circumstances, that choice is arbitrary and capricious and is wholly unreasonable." (*Moran*, at p. 403.) But constitutional challenges, such as a claim that a condition is overbroad, are reviewed de novo. (*People v. Acosta*, at p. 229; *People v. Stapleton* (2017) 9 Cal.App.5th 989, 993.)

II. *Electronic Search Condition*

Statiras challenges the electronic search condition under *Lent*, *supra*, 15 Cal.3d 481 as having no relationship to his burglary conviction, involving conduct not itself criminal, and not reasonably related to his future criminality. Comparing his case to *In re*

Erica R. (2015) 240 Cal.App.4th 907 and *In re J.B.* (2015) 242 Cal.App.4th 749

involving crimes of misdemeanor possession of ecstasy and petty theft respectively, and pointing out cell phones are now ubiquitous, he argues there is nothing about his current or past offenses or his personal history that demonstrates a predisposition to use electronic devices in connection with criminal activity. Statiras further contends the condition is unrelated to his future criminality; that "nothing in the record indicates [he] had any disposition to plan or commit crimes using computers, cell phones, or any other electronic devices" and thus the record does not establish the required factual nexus between his burglary conviction, his personal history, and imposition of warrantless and unrestricted searches of his electronic storage devices. Statiras finally contends the condition is unconstitutionally overbroad on its face, and violates his privacy rights under *Riley v. California* (2014) 573 U.S. 373 (*Riley*).

The People concede that the challenged electronics search condition has no relationship to Statiras's burglary offense and involves conduct that is not itself criminal. They maintain, however, that the condition is reasonably related to Statiras's supervision and to his rehabilitation and preventing potential future criminality. Specifically, they argue the condition will allow law enforcement to supervise Statiras more effectively because it aids the probation department in monitoring and ensuring his compliance with the terms of his probation, and it is especially important given his long history of substance abuse, drug-related crimes, probation violations, as well as his violent acts while under the influence of drugs. The People point out that Statiras admitted to using methamphetamine on the day he committed the offenses, and permitting probation

officers to search his electronic devices could easily reveal evidence of illicit drug purchases or substance abuse that would violate his probation and jeopardize community safety.

A. *The Condition is Reasonable under Lent*

We agree with the People that the electronics search condition meets the reasonableness standard for preventing future criminality under *Lent*.² As this court pointed out in *People v. Trujillo* (2017) 15 Cal.App.5th 574, 583, review granted November 29, 2017, S244650, our Supreme Court has made clear that a "condition of probation that enables a probation officer to supervise his or her charges effectively is . . . 'reasonably related to future criminality.' " (*People v. Olguin* (2008) 45 Cal.4th 375, 380-381; see also *People v. Valdivia* (2017) 16 Cal.App.5th 1130, 1138, review granted Feb. 14, 2018, S245893.) In *Valdivia*, the court pointed out that to meet this requirement, the condition need not have a specific connection to the facts of the defendant's offense or other past criminal conduct, and it need not have a tendency to preclude a defendant from engaging in similar criminal conduct in the future. (*Id.* at pp. 1137-1138.) Rather, " 'probation conditions authorizing searches "aid in deterring further offenses . . . and in monitoring compliance with the terms of probation. [Citations.] By allowing close supervision of probationers, probation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by

² Many cases dealing with the validity of electronic search conditions are pending review in the California Supreme Court, with the lead case being *In re Ricardo P.* (*In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923.)

probationers." ' [Citations.] . . . '[A] warrantless search condition is intended to ensure that the subject thereof is obeying the fundamental condition of all grants of probation, that is, the usual requirement . . . that a probationer "obey all laws." Thus, warrantless search conditions serve a valid rehabilitative purpose, and . . . such a search condition is necessarily justified by its rehabilitative purpose.' " (*Valdivia*, at p. 1138.) The *Valdivia* court concluded: "Like most, if not all, probationers, defendant here was ordered as a condition of probation to '[o]bey all laws applicable to [him].' Given this condition, the fact that defendant may not have shown any predisposition to use an electronic storage device like a cell phone or computer for purposes of criminal activity . . . does not render the electronic storage device search condition unreasonable under *Lent*. The electronic storage device search condition—like the rest of the search conditions (to which defendant did not object)—serves to enable defendant's probation officer to supervise him effectively by helping the probation officer ensure that defendant is complying with the conditions of his probation by obeying *all* laws, not just the law he previously disobeyed Because the electronic storage device search condition serves this valid rehabilitative purpose, it is reasonably related to future criminality and thus satisfies the *Lent* test." (*Id.* at pp. 1138-1139.)

All of these conclusions apply to Statiras's condition. The probation officer's report recounted Statiras's lengthy criminal history including felony offenses, and the lower court here had a reasonable basis to conclude Statiras has substantial risk factors relevant to reoffending—including his history of drug use and recent homelessness—that had to be addressed by the probation officers. It could decide that an effective way to

confirm his compliance would be to permit his electronic devices to be examined, rather than merely relying on meetings and telephone conversations. (Accord, *People v. Trujillo*, *supra*, 15 Cal.App.5th at pp. 583-584, rev. gr.) Further, because Statiras has performed poorly on probation, conditions such as this one that will assist probation officers to closely monitor his compliance are justified for their rehabilitative purpose. This distinguishes his case from *In re Erica R.*, or *In re J.B.*, in which the juveniles did not have the sort of criminal history as he does (*In re Erica R.*, *supra*, 240 Cal.App.4th at p. 913 [record was absent information regarding minor's social or personal history]; *In re J.B.*, *supra*, 242 Cal.App.4th at p. 753 [minor admitted to two and a half years of marijuana use and had poor attendance and performance at school]; see also *In re Juan R.* (2018) 22 Cal.App.5th 1083, 1091 [distinguishing *Erica R.* and *J.B.*]). For the above reasons articulated by the *Valdivia* court, we conclude the electronics search condition is not unreasonable under *Lent* as applied to Statiras.

B. The Electronics Search Condition is Not Unconstitutionally Overbroad

We part company with the *Valdivia* court, however, with respect to Statiras's claim of overbreadth; on this record we cannot say the electronics search condition is unconstitutionally overbroad. A condition should be invalidated as overbroad when it imposes limitations on a person's constitutional rights that are not closely tailored to the purpose of the condition. (*People v. Acosta*, *supra*, 20 Cal.App.5th at p. 229, citing *In re Sheena K.* (2007) 40 Cal.4th 875, 890.) " 'A restriction is unconstitutionally overbroad . . . if it (1) "impinge[s] on constitutional rights," and (2) is not "tailored carefully and reasonably related to the compelling state interest in reformation and

rehabilitation." [Citations.] The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' " (*People v. Stapleton, supra*, 9 Cal.App.5th at p. 993.)

Statiras contends the electronics search condition is overbroad on its face because it does not limit in any way the scope of any search of his electronic devices—assertedly having applications containing detailed personal information unrelated to any potential probation violation—and it does not specify the devices to which it applies. He relies on the United States Supreme Court's observation in *Riley (supra*, 573 U.S. at pp. 385-386) as to the breadth of data on a cell phone, and argues *Riley* makes clear such searches implicate privacy concerns not implicated by a traditional search. Statiras maintains we should follow the reasoning of the courts in *People v. Valdivia, supra*, 16 Cal.App.5th 1130, review granted and *People v. Appleton* (2016) 245 Cal.App.4th 717, which held warrantless searches of electronic storage devices carried the potential for significant intrusion into a defendant's private affairs having nothing to do with illegal activity (*Valdivia*, at p. 1144; *Appleton*, at p. 725), and remanded for the trial court to narrow the condition. (*Valdivia*, at p. 1147; *Appleton*, at p. 727.)³

³ *People v. Valdivia, supra*, 16 Cal.App.5th 1130, review granted, involved a defendant who pleaded no contest to inflicting corporal injury on his spouse and was sentenced to probation. His conditions of probation not only permitted warrantless searches of electronic storage devices under the defendant's control, but required him to provide necessary passwords to facilitate any such search. Though it upheld the

The People respond that the overbreadth doctrine is not recognized in the Fourth Amendment context; Statiras waived his Fourth Amendment rights by consenting to the condition; and the challenged condition is reasonable and constitutional given the "special needs" of California's probation system as well as the fact Statiras's diminished expectation of privacy as a probationer does not take precedence over the state's compelling probationary interests.

We reject Statiras's overbreadth challenge on its premise, that is, that *Riley's* analysis of Fourth Amendment protections applies to him. In *Riley*, the court held the warrantless search of *an arrestee's* cell phone implicated and violated the individual's Fourth Amendment rights. (*Riley, supra*, 573 U.S. 373 at p. 403.) The court explained that modern cell phones, which have the capacity to be used as mini-computers, can potentially contain sensitive information about a number of areas of a person's life. (*Id.* at pp. 393-394.) The court emphasized, however, that its holding was that cell phone

reasonableness of the electronic search condition under *Lent*, the *Valdivia* court, based on *Riley, supra*, 573 U.S. 373, held the electronic search condition was unconstitutionally overbroad under the Fourth Amendment (*Valdivia*, at pp. 1144-1147) because its potential impact on the defendant's Fourth Amendment rights "exceed[ed] what is reasonably necessary to serve the government's legitimate interest in ensuring that he complies with the terms of his probation." (*Valdivia*, at p. 1147.) In *Appleton*, the court found the state had an interest in preventing the defendant from "us[ing] social media to contact minors for unlawful purposes." (*People v. Appleton, supra*, 245 Cal.App.4th at p. 727.) Given that limited justification, the court struck a general electronic device search condition and remanded the matter to the trial court to craft a narrower condition. (*Ibid.*) This court disagreed with *Appleton* in both *People v. Trujillo, supra*, 15 Cal.App.5th 574, review granted and *People v. Nachbar* (2016) 3 Cal.App.5th 1122, review granted December 14, 2016, S238210, explaining that *Riley's* conclusions do not necessarily apply in the probation-condition context without specific facts showing a heightened privacy interest. (*Trujillo*, at pp. 587-589; *Nachbar*, at p. 1129.) We find the reasoning of *Trujillo* and *Nachbar* persuasive.

data is subject to Fourth Amendment protection, "not that the information on a cell phone is immune from search." (*Riley*, at p. 401.)

Unlike the defendant in *Riley* who had not been convicted of a crime and was still protected by the presumption of innocence, Statiras is under probation supervision, and thus his privacy rights are diminished and may more readily be burdened by restrictions that serve a legitimate purpose. (See *United States v. Knights* (2001) 534 U.S. 112, 119 [probationer does not " 'enjoy "the absolute liberty to which every citizen is entitled" ' "]; *People v. Trujillo*, *supra*, 15 Cal.App.5th at 574, rev. gr.; *People v. Nachbar*, *supra*, 3 Cal.App.5th at p. 1129, rev. gr.; *In re J.E.* (2016) 1 Cal.App.5th 795, 805, review granted October 12, 2016, A145399.) In *People v. Trujillo*, this court made the same observation, pointing out that courts routinely uphold broad probation conditions permitting searches of a probationer's residence without a warrant or reasonable cause. (*Id.* at pp. 587-588.) Like the defendant in *Trujillo*, at pages 588-589, Statiras does not challenge the probation condition authorizing officers to conduct random and unlimited searches of his residence at any time and for no stated reason, and he made no showing that a search of his electronic devices would be any more invasive than an unannounced, without-cause, warrantless search of his residence. Here, as in *Trujillo*, the record supports a conclusion that the electronic device search condition is necessary to protect public safety and to ensure Statiras's rehabilitation during his supervision period, and a routine search of defendant's electronic data "is strongly relevant to the probation department's supervisory function." (*Id.* at p. 588.) We adopt a similar conclusion as *Trujillo*: "Absent particularized facts showing the electronics-search condition will infringe on [Statiras's]

heightened privacy interests, there is no reasoned basis to conclude the condition is constitutionally overbroad or to remand for the court to consider a more narrowly-drawn condition." (*Id.* at p. 589.) On this record, we conclude the burden on Statiras's privacy is insufficient to show overbreadth, given the legitimate penological purpose shown for searching his electronic devices.

Because we reject Statiras's overbreadth claim on its premise, we do not address the People's contention that the overbreadth doctrine does not apply outside the First Amendment context. (Compare *Schall v. Martin* (1984) 467 U.S. 253, 268, fn. 18 ["[O]utside the limited First Amendment context, a criminal statute may not be attacked as overbroad"] with *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1095, fn. 15 [noting that limitation of overbreadth claims to First Amendment violations "is not invariably observed"].)

III. *Condition G: Probation Officer Approval of Residence and Employment*

Statiras contends the condition that he obtain his probation officer's approval for his residence and employment is unconstitutionally overbroad. Specifically, he maintains it "infringes on [his] ability to live and work without being reasonably related to the state's compelling interest in his rehabilitation or public safety" and is "an improper delegation of judicial authority because it confers unfettered power to veto Mr. Statiras's choice of residence or employment for any reason, or no reason at all." Statiras asks us to strike the condition as a violation of his Fifth and Fourteenth Amendment rights to association, privacy, and liberty.

A. Forfeiture

Pointing out Statiras did not object to probation condition g below, the People argue the condition is facially valid, and that Statiras forfeited any as-applied challenge. Statiras concedes he did not object to the condition, but he maintains under *In re Sheena K.*, *supra*, 40 Cal.4th 875, the constitutional challenge is not forfeited because it presents a pure question of law that may be raised for the first time on appeal.

" 'As a general rule, failure to challenge a probation condition on constitutional or *Lent* grounds in the trial court waives the claim on appeal.' [Citations.] This rule is intended to ' "encourage parties to bring errors to the attention of the trial court, so they may be corrected." ' [Citation.] An exception exists, however, where a party raises a *facial* challenge to a condition of probation as constitutionally vague or overbroad that can be resolved without reference to the sentencing record in a particular case. [Citation.] In reaching this conclusion, our high court emphasized that it 'd[id] not conclude that "all constitutional defects in conditions of probation may be raised for the first time on appeal, since there may be circumstances that do not present 'pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court.' [Citation.] In those circumstances, '[t]raditional objection and waiver principles encourage development of the record and a proper exercise of discretion in the trial court.' " ' " (*In re L.O.* (2018) 27 Cal.App.5th 706, 711-712, quoting *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033; *People v. Welch* (1993) 5 Cal.4th 228, 237; *In re Sheena K.*, *supra*, 40 Cal.4th at pp. 881, 887, 889; *People v. Trujillo* (2015) 60 Cal.4th 850, 856.)

Under the foregoing principles, Statiras forfeited his overbreadth challenge to the employment approval condition. Statiras relies on *People v. Burden* (1988) 205 Cal.App.3d 1277,⁴ contending that like the defendant in *Burden*, his own "employment had no relation to his offense; and going forward, the type of job [he] obtains does not impact the state's interest in [his] reformation and rehabilitation." These arguments, however, require a consideration of underlying facts including Statiras's offense and his employment history. Such an analysis does not present a pure question of law, but instead, requires review of the record. To preserve that sort of argument, Statiras was required to raise his challenge in the lower court so as to allow it to consider the specific argument with reference to Statiras's personal circumstances, rather than ask this court to address the claim on an undeveloped record. (See *Sheena K.*, *supra*, 40 Cal.4th at pp. 888-889.)

⁴ In *People v. Burden*, *supra*, 205 Cal.App.3d 1277, the defendant, who worked as a salesperson, pleaded guilty to writing bad checks and the trial court imposed a probation condition barring him from " 'working in a position of outside or commissioned sales.' " (*Id.* at p. 1279.) This court struck the condition, explaining that a condition relating to employment "must be 'necessary to serve the dual purpose of rehabilitation and public safety' " and the condition there was an "unnecessary infringement on [the defendant's] right to work." (*Id.* at p. 1281.) We acknowledged that a court could impose a probation condition "imping[ing] upon the defendant's scope of employment," where "the defendant perpetrated the crime *in the course of his business*." (*Id.* at p. 1280.) But in *Burden*, the defendant "was not acting in the capacity of a salesperson when he wrote the bad checks." (*Ibid.*)

B. *Residence Approval*

Relying on *People v. Bauer* (1989) 211 Cal.App.3d 937 and *People v. Soto* (2016) 245 Cal.App.4th 1219, Statiras contends the condition requiring he obtain probation officer approval of his residence is overbroad because it "vested full discretion in the probation officer to approve or reject [his] choice of residence" and gives the officer unfettered and unnecessary "broad and sweeping power over [his] choice of residence."

In *People v. Bauer, supra*, 211 Cal.App.3d 937, the appellate court rejected a residence approval requirement—designed to prevent the defendant from living with his parents—in part because the defendant's probation report did not suggest his home life contributed to the crime of which he was convicted or was reasonably related to future criminality. (*Id.* at p. 944.) The court held the condition therefore violated *Lent, supra*, 15 Cal.3d 481, and also impinged on the defendant's constitutional right to travel and freedom of association. (*Bauer*, at p. 944.) According to the court, it was extremely broad since it gave the probation officer the power to forbid the defendant "from living with or near his parents—that is, the power to banish him." (*Ibid.*) In *People v. Soto, supra*, 245 Cal.App.4th 1219, the Court of Appeal struck a probation condition requiring the defendant to obtain prior approval before changing his place of residence or leaving the state. (*Id.* at p. 1226.) The basis for the court's decision was not that the condition was overbroad, but unreasonable under *Lent*, where the defendant was convicted of driving under the influence of alcohol and with a suspended license, crimes not reasonably related to where he lived or could be influenced by whether he left the state: "[L]ike the *Bauer* defendant, there is nothing in the record to indicate that defendant's

living situation contributed to his crime or would contribute to his future criminality. The only mention of defendant's living situation is contained in the probation report, which indicated that defendant had a stable residence and was living with his brother. In sum, there is nothing to suggest that leaving Monterey County or the State of California would have an effect on defendant's rehabilitation." (*Soto*, at p. 1228.) The court held the record did not support a finding that the condition had any relation to the defendant's future criminality. (*Id.* at p. 1228.)

As we have previously explained, it is now settled that a "condition of probation that enables a probation officer to supervise his or her charges effectively is . . . 'reasonably related to future criminality.' " (*People v. Olguin*, *supra*, 45 Cal.4th at pp. 380-381; accord, *People v. Soto*, *supra*, 245 Cal.App.4th at p. 1227.) Unlike the condition in *Bauer*, the residence condition imposed here is not designed to prevent Statiras from living where he pleases or "banish" him. (Accord, *People v. Arevalo* (2018) 19 Cal.App.5th 652, 657.) Moreover, unlike both defendants in *Bauer* and *Soto*, Statiras has a lengthy criminal and drug use history, thus, where he lives may directly affect, and is needed to aid in, his rehabilitation. As in *Arvalo*, the probation officer can limit Statiras's exposure to sources of temptation for future criminality by, for example, not approving residences in close proximity to drug dealers. (*Arevalo*, *supra*, 19 Cal.App.5th at p. 658.) And likewise, "[l]iving in an area having easy access to drug suppliers could negatively affect [his] rehabilitation." (*Ibid.*) Without a limitation placed by the residence condition or without supervision, Statiras could opt to live where drugs are used, sold, or manufactured. A probation officer supervising a person like Statiras must

reasonably know where he resides and with whom he is associating in deterring future criminality. We conclude the residence approval condition is constitutionally valid.

C. Request to Modify Probation Condition

As an alternative to striking probation condition g, Statiras asks that this court remand his case with instructions that the trial court modify the condition to impose "guidelines" for the probation officer to employ in determining whether to approve his choice of residence and employment. The request is premised on his contention that the condition is overbroad; so we decline the request on the grounds stated above.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.